

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3245 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KIRANKUMAR LALJI

Versus

G L BHAGAT

Appearance:

MR YS MANKAD for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/08/1999

ORAL JUDGEMENT

#. The petitioner is owner of the land in Bhuj Sim S. No.395/1 and 395/2 admeasuring 37231 Sq. Meters. The petitioner wanted to use this land for nonagricultural purpose, he approached to the Collector, Kachchh by way of application for granting him to use this land for nonagricultural purpose. That application came to be allowed under the order dated 30/4/1982 and the

petitioner was permitted to use this land for nonagricultural purpose on the conditions inter alia to pay premium amount of Rs.93,077.50 to be paid within a period of 30 days from the date of the order and to furnish an undertaking to the effect that if the assessment of the land in question by the Deputy Town Planner is more than Rs.5/- per Sq. Mtr., then he would pay the additional difference of the amount.

#. The Deputy Town Planner under its letter No.L/Bhuj/4323 dated 5/11/84 decided the assessment of the price of the land in question @Rs.10/- per Sq. mtr. Accordingly under the order dated 15/2/85 the Collector has ordered that Rs.3,72,310/- is the amount which has to be paid by the petitioner towards the premium as a condition for grant of permission to use the land in question for nonagricultural purpose and 50% of the market price has to be paid as premium and the amount payable by the petitioner was assessed to Rs.1,86,155/-. The Collector vide his earlier order has provisionally fixed the premium amount to be paid by the petitioner Rs.93,077.50, the petitioner was ordered to pay the balance amount of Rs.93,077.50. This order was challenged by the petitioner under Section 211 of Land Revenue Code by filing a revision application before the State of Gujarat. The memo of the revision application filed by the petitioner is on the record of this Special Civil Application as Annexure-C. The petitioner filed further points by way of filing written arguments, which are there on the record of this Special Civil Application at Annexure-D. Revision application of the petitioner was came to be rejected by the State of Gujarat under its order dated 16/12/85 Annexure-E on the record, hence this Special Civil Application before this court.

#. The learned counsel for the petitioner contended that basic on which the Deputy Town Planner, Rajkot has assessed the market price of the land in dispute at Rs.10/- per sq. mtr. has not been made known to the petitioner. The petitioner was not furnished with the record of the Deputy Town Planner, Rajkot and the reliance on the letter of the Deputy Town Planner by both the Collector and the State of Gujarat is against the principles of natural justice. The second contention raised is that the State of Gujarat has not considered the major, important and substantial points raised by the petitioner in the revision application as well as written arguments. The petitioner has given the details of the comparable sales of the lands in vicinity but not a single sale has been referred, as if what the Deputy Town Planner, Rajkot given out the price that has to be taken

as if it is conclusive and final, in which no interference could be made. It is further contended that the approach of the Government of Gujarat in the revision application is wholly arbitrary and perverse. Where the petitioner cited the earlier sales in point of time to the order passed by the authorities concerned the same were not relied on the ground that the same relate to earlier period to the date of the order passed in the case of the petitioner. But, at the same time the Deputy Town Planner, Rajkot has assessed the price of the land as on 30/4/85 (here this appears to be incorrect, it should be 13/4/84). Lastly it is contended that market price of the land could have been assessed on the date on which the petitioner filed the application for conversion/grant of permission to use this land for nonagricultural purpose and in all the eventualities on the date on which the Collector passed the order.

#. Shri Samir Dave, AGP on the other hand strongly opposed this Special Civil Application. In his submission the order passed by both the Collector and revisional authority are perfectly legal and just in which no interference of this court is called for. It is urged that the petitioner is estopped from challenging the order of the Collector under which the petitioner was directed to pay the additional amount of Rs.93,077.50 towards premium as he has earlier agreed to abide by the price of the land as to be fixed by the Deputy Town Planner, Rajkot. Summing up his submissions, Shri Dave contends that the assessment of the price and determination of the amount of the premium to be paid by the petitioner earlier was only provisional and once the petitioner has agreed to pay the premium at the rate at which it is assessed by the Deputy Town Planner, Rajkot he cannot be permitted to resile from his commitment. Lastly it is contended that in such matters best judgment assessment is to be made. Even if there may be some possibility of slightly variance in the judgment of the Deputy Town Planner but only on this ground this court may not interfere where both the authorities below have decided matter against the petitioner.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties as well as going through the orders passed by the Collector, Kachchh as well as Govt. of Gujarat in revision, I am satisfied that the petitioner's grievance deserves to be allowed.

#. The learned counsel for the respondents has not disputed that the points raised by the petitioner in the

revision application and the written arguments had not been considered by the revisional authority. He also does not dispute that the relevant material on the basis of which Deputy Town Planner, Rajkot has arrived at the figure of Rs.10/- as price of the land in question per sq. mtr. has not been made known and given to the petitioners. In this Special Civil Application, the respondents have felt contended and satisfied by instructing his counsel to make the oral submissions and the reply to this Special Civil Application has not been filed. It is also not in dispute that the Deputy Town Planner, Rajkot determined price of the land vide order dated 13/4/84. It is also not in dispute that the Collector passed his first order on 30/4/1982.

#. In this Special Civil Application at this stage I do not consider it to be appropriate to decide which is the relevant date i.e. the date of the application or the date of the order granting the application for permission to use the agricultural land for nonagricultural purpose for determination of the market price thereof. This point has not been raised by the petitioners before the Collector, Kachchh or the State Government. Secondly as I am proposing to remand this matter back for decision to the Collector, I do not consider it otherwise necessary to decide this point here finally as the petitioner will have the opportunity to agitate the same before the authority concerned.

#. In the order dated 30/4/82 of the Collector, I find that the reference is there that the petitioner will furnish an undertaking that he will pay the difference of the amount of the premium i.e. the provisional amount of the premium determined by the Collector and the premium on the basis of the price as fixed of the land by the Deputy Town Planner, Rajkot. But that does not mean and taken to mean that the petitioner has no right whatsoever to challenge the legality, correctness and propriety of the order of the Collector passed on the basis of the order of the Deputy Town Planner, Rajkot. The price as fixed by the Dy. Town Planner, Rajkot is subject to the challenge by the petitioner and the undertaking of the petitioner to abide by the final price of the land fixed in the matter is to mean as fixed or found by the highest authority or the court to which the petitioner approached. This is only a reasonable and fair approach in consonance with the fair play and natural justice. The objections raised by the learned counsel for the respondent of the estoppel is not applicable and made available to the respondent to nonsuit petitioner in this Special Civil Application.

#. After going through the order of the revisional authority it is correct to content by the learned counsel for the petitioner that the points raised by the petitioner in the revision application and the written arguments were not noticed what to say to consider the same. The revisional authority has passed the impugned order in most cursory and mechanical manner. It is the approach, which is totally contrary to the basic principles of fair play and natural justice. The revisional authority is not there only to confirm the orders passed by the subordinate officer. It exercises a quasi judicial power and it is its duty to decide the matter in judicious manner. The approach of the revisional authority in this matter is totally perverse, which clearly reflects from the facts where the petitioner sought to rely on some of the orders passed by the Collector, Kachchh, those were discarded only on the ground that those are of the period earlier to the date of the order passed by the Collector in this case but, when the petitioner has contended that the Deputy Town Planner, Rajkot has determined the price of the land with reference to order dated 30/4/84, the revisional authority has failed to give out any satisfactory judgment to this contention of the petitioner. From the judgment of the revisional authority, I find that the Deputy Town Planner has made the assessment of the price of the land as on 30/4/85 (the correct date should be 30/4/84) i.e. after 2 years of the date on which the first order has been passed by the Collector. By passing of time inflation of the price is there and the petitioner is correct in his submission that the reference to the price as on the date after 2 years of the first order passed by the Collector could not have been relied upon. The contention of the learned counsel for the petitioner that the price of the land has to be determined by the Deputy Town Planner concerned with reference to the date of the order of the Collector is full of substance and merits. The contention of the learned counsel for the petitioner that reliance placed on the letter of the Deputy Town Planner, Rajkot without giving copy thereof and other relevant documents, on the basis of which the decision was given by the authority, to the petitioner is contrary to the basic principles of fair play and natural justice. Once the authority has to rely upon the letter of the Deputy Town Planner and other material it is its duty to furnish the copy thereof to the petitioner, so that he may have opportunity to produce his defence. As this matter is to be remanded back to the Collector Kachchh, it is not necessary nor justified to go any more deep in the matter as well as

finally to give findings on the merits of the matter.

In the result, this Special Civil Application succeeds in part and the same is accordingly allowed. The order of the Collector dated 15/2/85 and that of Secretary, Revenue Department, Gandhinagar dated 16/12/85 are quashed and set aside and the matter is remanded back to the Collector, Kachchh to decide the matter afresh after giving opportunity of hearing to the petitioner in accordance with law. Rule is made absolute accordingly. No order as to costs.

(S.K.Keshote, J.)

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